

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

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:
UNITED STATES OF AMERICA :
:
v. : Criminal No. DKC-11-0072
:
RICKEY CURVEY, :
:
Defendant. :
:
- - - - - x April 9, 2012

Greenbelt, Maryland

HEARING

BEFORE THE HONORABLE DEBORAH K. CHASANOW, Judge

APPEARANCES:

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KEYNOTE: "---" Indicates inaudible in transcript.
" * " Indicates phonetic spelling in transcript.

1 P R O C E E D I N G S

2 THE CLERK: The Court resumes in session, the
3 Honorable Deborah K. Chasanow presiding.

4 THE COURT: Good afternoon.

5 (A chorus of "good afternoon Your Honor.")

6 THE COURT: Please be seated. Mr. Lenzner.

7 MR. LENZNER: Thank you, Your Honor. Calling the
8 case of the United States of America versus Rickey Curvey,
9 DKC-11-0072.

10 I am Jonathan Lenzner and Robert Hur on behalf of
11 the Government and also present at counsel table is Special
12 Agent John Dunham with the Federal Bureau of Investigations.
13 This matter is called for sentencing.

14 MS. FELDER: Good afternoon, Your Honor, LaKeytria
15 Felder, Assistant Federal Public Defender representing
16 Mr. Rickey Curvey.

17 THE COURT: Very good, please be seated. I want to
18 begin by making certain we all have the same documents. The
19 pre-sentence report that I have was revised as of March 7th,
20 2012 --

21 MS. FELDER: Your Honor, I sent your office a copy
22 of the new one on Friday and spoke with Nancy Domcheck* and
23 sent it to her.

24 THE COURT: I did not print it, I did read it.

25 MS. FELDER: It just have corrections or additions

1 to the Defendant's psychiatric and physical history.

2 THE COURT: Right, okay, right I did read it online
3 but I did not print it out, okay. But we still have issues
4 with regard to criminal history I think on it, okay, but in
5 addition to the pre-sentence report the Defendant submitted a
6 sentencing letter dated March 26th and the Government
7 responded on April 5th. I also have just received the consent
8 order of forfeiture. Is that everything?

9 MS. FELDER: Your Honor, I also submitted a
10 supplement to the letter, to the sentencing letter, under
11 seal dated April 5th that included additional letters of
12 support as well as medical and mental health records.

13 THE COURT: Did you ever get us the hard copy? I
14 did not print that as well.

15 MS. FELDER: Yes, Your Honor, I did. I believe it
16 was hand delivered to Chambers, I have an additional copy if
17 you would like one.

18 THE COURT: No, I did read it again online but
19 Sharon Townsend was out on Friday and Nancy Domcheck* is
20 unfortunately not familiar with how to get my files up-to-
21 date, I was aware of that and I read it online but I thought
22 we were waiting for a hard copy and that is the material that
23 Ms. Blanche is referring to that she then incorporated into
24 the updated pre-sentence report.

25 MS. FELDER: That is correct, Your Honor.

1 THE COURT: Mr. Lenzner most importantly, did you
2 get all of that?

3 MR. LENZNER: I did, thank you.

4 THE COURT: Okay, very good. It is my
5 understanding Ms. Felder that there is an issue with regard
6 to criminal history calculation but not with regard to the
7 offense level, is that right?

8 MS. FELDER: That is correct, Your Honor.

9 THE COURT: And in this version is it Paragraphs 40
10 and 42?

11 MS. FELDER: That is correct, Your Honor.

12 THE COURT: Do you want to go ahead and let me know
13 what your position is?

14 MS. FELDER: Your Honor, our position is that
15 Mr. Curvey should be accurately categorized as a Category 4
16 and we acknowledge that, he may not technically fit within
17 the definition under 4A1.2 in terms of the single sentence.

18 But we believe that under 3553(a) and given the
19 full nature of the criminal history as recognized by the
20 Fourth Circuit in Atkins that the Court can take note that in
21 Paragraphs 40 and 42 of the pre-sentence report you will see
22 that he was in custody in one jurisdiction and then
23 additional charges were filed in a different jurisdiction.
24 He never was released from custody but he was somewhat
25 shuffled back and forth between the two jurisdictions and he

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1 has been assessed six points for those two convictions.

2 Our position is that we believe that it should only
3 be a total of four points allocated for those two convictions
4 given the fact that there was not an intervening arrest and
5 that if that objection is accepted then he would be a
6 Category 4 under the guidelines.

7 (Pause.)

8 THE COURT: How can you tell from here when he was
9 arrested? I understand technically it does not make any
10 difference because they were not sentenced at the same time
11 and consolidated but I do not even understand why you say he
12 was not arrested on the receiving of stolen property and
13 unauthorized use charge before the robbery with a deadly
14 weapon.

15 MS. FELDER: I believe he was arrested in April
16 1997 and then the subsequent charge was in May of 1997, he
17 was never released from custody.

18 THE COURT: Well I know he was in custody from
19 April of '97 on the receiving stolen property but the date of
20 arrest it is stated here is July 27th, '96.

21 MS. FELDER: That is correct, Your Honor.

22 THE COURT: So he was arrested in July, probably
23 released but then taken into custody again in April.

24 MS. FELDER: Your Honor, my understanding is that
25 he was in custody and then this additional charge was filed

1 and he never left custody. Here it states that he was
2 released 2/12/03.

3 THE COURT: That is looking at the wrong end of
4 things. My understanding is that you are contending that he
5 committed the receiving stolen property unauthorized use
6 offense and was not arrested on that until after the robbery
7 with a deadly weapon was committed. That is what my
8 understanding would be about the failure to have had an
9 intervening arrest.

10 The way I read this report he was arrested on the
11 first one on July 27th, '96 and thus there was an arrest
12 between the two offenses.

13 MS. FELDER: Your Honor, our position is that there
14 wasn't and I think that the response to the objection is the
15 same and that there was no intervening arrest.

16 THE COURT: Ms. Blanche, the report has a paragraph
17 number and then a date and according to the report structure
18 it is listed as date of arrest, is that indeed what that is?

19 MS. BLANCHE: July '96 that is correct, Your Honor.

20 THE COURT: It is not the date of the offense, it
21 is the date of arrest, sometimes that is the same but this
22 indicates to me that he was arrested on the offense listed in
23 Paragraph 40, July 27th, 1996.

24 He was then arrested and charged with a robbery in
25 May of 1997. He may already have been in custody at the time

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1 he was charged with that second one but that does not trigger
2 the definition of prior sentence in 4A1.2(a)(2). That is the
3 Defendant was arrested for the first offense prior to
4 committing the second one.

5 Even if he had been, the prior sentences are still
6 counted separately because they were not contained in the
7 same charging instrument and the sentences were not imposed
8 on the same day.

9 So in any event for guideline purposes they would
10 be counted separately, but I do not understand your argument
11 over representation or 3553(a) on that basis --

12 MS. FELDER: Your Honor, our contention is --

13 THE COURT: Go ahead.

14 MS. FELDER: Our contention is that Mr. Curvey was
15 already in custody, there was no new conduct, once he was in
16 custody he was charged with this additional offense.
17 Essentially, he served one continuous sentence from '97 to
18 2003 although he was shuttled between two different
19 jurisdictions.

20 I understand that the Court does not accept that
21 argument but our basis is just that he was in continuous
22 custody for an extended amount of time and while it may not
23 technically fit the definition of a Category 4 we do believe
24 that given that he was in custody and incarcerated for a
25 continuous amount of time and by way of State's action or

1 lack of action the two instances weren't consolidated.

2 Nevertheless, the Court would have the authority
3 under 3553(a) to consider Mr. Curvey as a Category 4 and if
4 the Court were to accept that then its guidelines would be 46
5 and 57 months on Count 2 instead of 57 and 71.

6 THE COURT: Let me back up, for guideline purposes
7 I believe the pre-sentence report correctly assesses three
8 points for each of those two convictions and thus Mr. Curvey
9 ends up as a criminal history category of 5 for Count 2.

10 For Count 2 the guidelines are advisory and I need
11 to hear fully from both sides before deciding what sentence
12 to impose. I do not understand this to be a formal request
13 for a downward departure for over representation as that term
14 applies for guideline purposes.

15 MS. FELDER: That is correct, Your Honor.

16 THE COURT: So we will continue with 19 and 5 for
17 Count 2, mandatory consecutive 10 year sentence on Count 3.
18 Is anyone to speak other than counsel and the Defendant?

19 MS. FELDER: No, Your Honor.

20 THE COURT: No? All right. Mr. Lenzner.

21 MR. LENZNER: Your Honor, the Government is seeking
22 obviously the mandatory 10 years on Count 3 which the
23 Defendant can see, the issue here really goes to Count 2 and
24 my understanding from the Defendant's submission is that they
25 are seeking a variance on Count 2.

1 So the Government is asking for a sentence within
2 the guideline range. Before I address the actual range, let
3 me just touch on some of the essential and relevant facts if
4 I may that support the Defendant's conviction under Count 2.

5 On September 24th of 2010, the Defendant was
6 driving in a vehicle that had been stolen from a young woman
7 in Prince George's County about nine days earlier. About
8 3:00 a.m. that day the Defendant went to a gas station in the
9 stolen white Honda Accord and the Defendant who was carrying
10 a loaded firearm approached two men who were there to pump
11 gas into their car.

12 This Defendant placed the loaded firearm against
13 the body of one of the young men and he threatened to shoot
14 them both and he stole their property and then he took their
15 vehicle. It was this Defendant, Your Honor, who pointed the
16 loaded firearm at the two young men placing them at risk of
17 death or serious injury.

18 He committed these series of acts in view of a
19 video surveillance camera which captured the incident quite
20 clearly and the Defendant drove away in the red stolen
21 vehicle followed by his colleague's white vehicle and within
22 a few minutes the Defendant had parked the stolen vehicle
23 that he just carjacked and he got back into the white
24 vehicle.

25 Now, the responding police officers pursued the

1 white vehicle which the Defendant was in and the vehicle took
2 them on a high speed chase into Washington, DC and on the
3 dashboard camera you can see quite clearly speeds in excess
4 of 100 miles an hour and quite dangerous driving on city
5 streets.

6 Eventually the vehicle crashed and ran into a
7 circle in Washington, DC and the Defendant at that point had
8 a choice to make, made a few choices, could have surrendered,
9 he could have simply just run away but instead he chose
10 another option which was to emerge from the vehicle and fire
11 a loaded firearm in the direction of the police officers who
12 were just doing their jobs that day.

13 He decided that he was going to do almost anything
14 to avoid capture and that included risking and taking the
15 life of another person and looking at Paragraph 10 of the
16 pre-sentence report it states very clearly the Defendant
17 pointed a firearm in the direction of the Prince George's
18 County Police Officers and discharged the weapon as he
19 attempted to flee.

20 After firing at the police officers he ran away and
21 for a few minutes he managed to abate capture during which he
22 tossed the firearm and his shirt and he was later captured by
23 the police officers. After being identified by the
24 carjacking victims and by the pursuing police officers he was
25 transported to a police station.

1 According to Paragraph 12 of the pre-sentence
2 report, after being removed from the police vehicle the
3 police found on the floor of the vehicle where the Defendant
4 had been more stolen property from another property who had
5 been robbed earlier that day on September 23rd.

6 So how does one fashion a sentence for this
7 Defendant that not only addresses the factors under 18 USC
8 3553(a)? It is really the Government is not looking to
9 impose a sentence or ask for a sentence that is greater than
10 necessary and we have listened to countless jail calls which
11 this Defendant has spoken to his daughters.

12 We have heard for example one daughter tell her
13 father how proud she was when she had an internship at the
14 FCC and certainly the Government does not want to prevent the
15 young woman from having access to her father.

16 But when you look at this Defendant's violent
17 criminal history and the acts that he committed on this
18 occasion, we wrestle with what is sufficient but not more
19 than necessary and so we look to the recommendation put forth
20 by the Defendant and the reasons that he gives in his
21 memorandum.

22 Of course they are asking for a variance on Count 2
23 and they base that on a troubled childhood and abuse that led
24 to a fragile mental condition which would be the reason for
25 the variance.

1 The Defendant's memorandum suggests that he
2 deserves a tremendous break because he grew up in "war zone"
3 and suffered from physical injuries and no one wishes to
4 minimize the Defendant's background or any difficult
5 circumstances in his life.

6 Please let the Government respond with a couple of
7 points. Of course the Court may grant a downward departure
8 if it finds mitigating circumstances of a degree not taken
9 into consideration by the guidelines include any information
10 regarding his background.

11 But if the facts show that he was truly
12 extraordinary the abuse suffered during childhood may
13 constitute a valid ground for departure and so looking to the
14 Rules under 5H1.3 and 5K2 as well as the case law cited by
15 the Defendant, the Government does not believe that a
16 downward departure is warranted in this case.

17 The factual record does not support, we believe,
18 the finding of the circumstances under which the Defendant
19 grew up were so extraordinary that a downward departure would
20 be warranted.

21 Just looking at the case law the Defendant cited,
22 the non-Circuit case Brown didn't address the merits of the
23 claim for extraordinary circumstances but they already noted
24 that the Defendant there submitted a psychologist report
25 showing that the Defendant's childhood drama was the primary

1 cause of his criminal behavior.

2 In Rivera, the second Circuit case, that
3 Defendant's factual records show that he had been beat with a
4 cord and he had his hands burned routinely. While the facts
5 in Rivera are somewhat similar to the facts here, Your Honor,
6 we believe the facts in Rivera make it a little more
7 extraordinary but even there that Court rejected a downward
8 departure for reasons that we believe are relevant here.

9 First, much of the unfortunate circumstances in
10 that Defendant's life demonstrated lack of guidance as youth
11 and a disadvantage of upbringing and under 5H1.12 we know
12 that those are not relevant grounds for departure.

13 While the physical abuse may be relevant, the abuse
14 to this Defendant like the abuse to the Defendant in Rivera
15 did not rise to an extraordinary level that can be assumed to
16 cause mental or emotional pathology.

17 As the Second Circuit noted in Rivera, as much
18 could be said of every criminal defendant who has suffered
19 abuse from a child or corporal punishment at the hands of ---
20 parents. While Mr. Curvey's childhood may have been tragic
21 we believe it does not fall outside the heartland of typical
22 cases.

23 So Your Honor just looking at the Defendant's
24 memorandum, we would like just to address a couple of other
25 issues. The Defendant attributes his actions that evening to

1 being heavily intoxicated and abuse of PCP and the Government
2 has no information to support those claims other than the
3 Defendant's statements.

4 Officers who encountered him that night didn't
5 detect any signs of intoxication. When he was first stopped
6 minutes after shooting at the police officers the Defendant
7 gave a story about coming out of a building and he did not
8 seem intoxicated and a few hours later he gave a coherent
9 story on video tape to detectives from the Metropolitan
10 Police Department.

11 Regardless, we believe that voluntary intoxication
12 of illegal drugs should not be a mitigating factor assuming
13 if it is even true.

14 The Defendant also writes in his letter that he did
15 not know what he had done until he saw the DVD that his
16 attorney showed him. But in the statement that he gave to
17 the police officers just hours after he speaks coherently and
18 logically about what had happened.

19 Now he does lie about what had happened initially
20 but he eventually comes clean and so we believe the evidence
21 would rebut any claim that he was heavily intoxicated or
22 under PCP, under the influence of that.

23 Finally, the Defendant claims that in a show of
24 extraordinary acceptance the Defendant made efforts to assist
25 the Government and we wholeheartedly disagree with that

1 statement. He did not cooperate. When he was arrested he
2 initially lied about a young man who I will address as T.L.

3 When the Defendant was arrested another young man
4 named T.L. was arrested as well with him and the Defendant
5 after choosing to speak to the police told the police that
6 T.L. was in the car and he actually put most of the blame of
7 this incident on this person who this Defendant knew was not
8 part of the crime.

9 By attributing blame to somebody who he knew was
10 innocent we think this Defendant certainly did not cooperate
11 and we may have quite frankly been on a good faith basis to
12 seek a level for obstruction, a two level enhancement we
13 don't but I am just saying that he certainly did not
14 cooperate.

15 Even though he initially lied about T.L. eventually
16 six months later he did come clean and tell us that T.L. had
17 not been with him but there was no cooperation, he never told
18 law enforcement who was really in the vehicle with him and I
19 will just say generally that while he did speak to law
20 enforcement from a different jurisdiction I am told by that
21 jurisdiction that there was no cooperation.

22 So looking at the factors under 18 USC 3553(a) we
23 submit that the nature and the circumstances of this offense
24 and the history and character of this Defendant support a
25 sentence within the guideline range, Your Honor.

1 I don't want to rehash the facts, let me just look
2 for a moment at who this Defendant was on September 24th,
3 2010 and what he did.

4 This was somebody who has had a long history of
5 criminal activity and this was not the first time that he
6 fired a gun, he fired a gun when he was 17 and he was a youth
7 back then and he was held accountable for that crime.

8 You would think that after that crime he would have
9 learned his lesson, but then at age 21 he was involved in an
10 armed robbery and he was arrested for that and convicted, he
11 was sentenced to a term of 20 years much of which was
12 suspended and the Defendant received a break at that time as
13 well and he got out in 2002 I believe.

14 At that point one would think that this young man
15 would change things and many of the arguments put forth in
16 the Defendant's memorandum I think would fit better if they
17 were brought after he got out of jail on that incident.

18 But now at age 35 the Defendant is continuing to
19 use firearms to commit crimes of violence and it wasn't just
20 simply some aberration.

21 In 2005 and 2006 this Defendant continued to commit
22 crimes, maybe not as serious as this one, but he was still
23 continuing to commit crimes such as theft or unlawful entry
24 or threats of bodily injury to others.

25 So here he is on September 24th, 2010 and you would

1 think that a man at this age with experiences that he has had
2 with three young girls he would have known better than to use
3 a firearm to rob two innocent young men at a gas station and
4 you would think that that man would have known better than to
5 try to flee at a high rate of speed through city streets and
6 you would think that that man with all those life experiences
7 and all the things to live for with his three daughters would
8 have known better than to shoot at police officers but he
9 didn't.

10 Your Honor, we submit that the need for a sentence
11 imposed to reflect the seriousness of this crime, to provide
12 an adequate punishment and to deter this Defendant and others
13 we believe that a sentence within the guideline range is
14 necessary and it is not more than necessary.

15 But we believe it is sufficient and necessary
16 because there are people out there in Prince George's County
17 who may be thinking about committing a carjacking and there
18 are carjackings unfortunately in the county quite often and a
19 sentence within the guideline range will help send a message
20 to those people that if you do use a firearm to commit a
21 carjacking you will be held accountable.

22 For this Defendant at this stage of his life
23 whether or not a sentence within the guideline range will
24 deter him in the future I don't know, I hope so I think he
25 has, from what I have heard on the recordings, he has lovely

1 children and I hope that they will be able to enjoy him.

2 But quite frankly, Your Honor, for the safety of
3 this Defendant and the people around him, future victims and
4 his children we believe that a sentence within the guideline
5 range is necessary and is sufficient.

6 So if there is no question at this time I will have
7 a seat. Thank you very much.

8 THE COURT: Ms. Felder.

9 MS. FELDER: May I have a moment, Your Honor?

10 THE COURT: Yes.

11 MS. FELDER: Thank you, Your Honor. Your Honor, I
12 would like to acknowledge that Mr. Curvey's family is here,
13 his fiancé, daughters and grandmother are in attendance.

14 THE COURT: Very good, thank you.

15 MS. FELDER: This Court is tasked with fashioning
16 an individualized sentence not a sentence just based on the
17 conduct that we have heard the Government speak of but a
18 sentence that fulfills the purposes of sentencing under 18
19 USC 3553(a) and (a)(2).

20 We believe that a sentence of 144 months, 12 years
21 is sufficient but not greater than necessary to meet those
22 purposes of sentencing. It is double the amount of time that
23 Mr. Curvey has ever served in custody. He will be away from
24 his family for that entire time in addition to the time that
25 he has been in custody since September 2010.

1 Mr. Curvey has accepted full responsibility for his
2 actions. He has spoken to the Government on multiple
3 occasions, while it didn't pan out the way that the
4 Government hoped that it would Mr. Curvey did admit his
5 involvement in the activity, he did admit that T.L. was not
6 involved in the activity.

7 He gave valuable information and the Government
8 wanted him to continue on that course and that was a
9 Government officer from a different jurisdiction that I had a
10 conversation with.

11 I understand that there are other conversations
12 that happened before my involvement in the case, however,
13 Mr. Curvey was not willing to risk any further danger to his
14 family going down that path, Your Honor.

15 So he did initially attempt to but it didn't pan
16 out the way that they expected it to although the information
17 was valuable and the Government wanted to follow-up on those
18 conversations that had been started.

19 Mr. Curvey started this life with a deficit, a
20 deficit in a number of ways. He was exposed to drugs
21 prenatally, we are not sure of the exact type of drugs but we
22 do know that for the first two weeks of his life he was in
23 the neo-natal intensive care unit for going through
24 withdrawal systems as a newborn. He was born four to five
25 weeks premature.

1 While his mother in the records that were submitted
2 to the Court initially indicated that she had not been on
3 drugs, apparently she was and her own mother recalls her
4 being on drugs while she was pregnant with Mr. Curvey and she
5 also left him in the hospital while he was in the intensive
6 care unit.

7 While Mr. Curvey is aware of his mother's drug use
8 as he was growing up, he wasn't aware of her drug use
9 obviously when it was prenatal but his grandmother recalls
10 that. Not only did his mother struggled with drug addiction
11 she is also reported as being bi-polar and suffering from
12 depression.

13 From a young age it is apparent that Mr. Curvey was
14 not given the care that he needed and that he was entitled
15 to, his mom sought out help after she admitted that she would
16 beat him with the belt, she would beat him with her fist.
17 There is a lot of violence, persona violence, that he was
18 exposed to as a young child. I think that is important that
19 matters.

20 Under 3553(a) the Court has to look at more than
21 just the conduct and yes it was dangerous and non-sensible
22 and it shouldn't have happened but if we were just concerned
23 with punishment then there would be no need for the purpose
24 of sentencing.

25 So I ask the Court to consider the fact that

1 Mr. Curvey was exposed to drugs prenatally but while it is
2 not clear what the factor that may be over his lifetime what
3 is clear is that children who are exposed to drugs in utero
4 often suffer from mental health issues, behavioral problems
5 and cognitive development. That is all born out in the
6 records that were submitted to the Court and I will just cite
7 to those records briefly.

8 I refer to the sealed supplement that was filed on
9 April 5th and attached to it are eight, I believe it is 11
10 pages of documents from the Children's Hospital National
11 Medical Center and what you will see is that there were
12 psychological evaluations conducted on Mr. Curvey and there
13 are notes about his family and home life as well.

14 There is also a diagnoses, he was ultimately
15 diagnosed with oppositional behavior disorder, attention
16 deficit disorder with hyperactivity, he was prescribed
17 medication of Ritalin and is also recommended that he undergo
18 behavior therapy treatment as well as Dexedrine was
19 considered as an option for medication as well.

20 I think also of notice that his IQ was tested, he
21 had a full scale IQ score of 79, a verbal scale IQ score of
22 75, performance scale IQ score of 86 and his full IQ scale
23 was classified as borderline with approximately seven percent
24 of children his age obtaining scores equal to or lower than
25 his.

1 We provide those records to give the Court an idea
2 of his developmental stage, his impulse control issues, his
3 behavior control issues and insight into his family life.

4 Now, it is not just that he was exposed to drugs
5 prenatally, his mother had a mental illness bi-polar and
6 depression and children who have parents who have mental
7 illness also suffer from elevated mood disorders, increased
8 psychopathology including intentional and behavioral problems
9 and greater academic difficulties.

10 So that coupled together and then you add in the
11 fact that he did grow up in a war zone and that is not a term
12 that is created by the defense. This is recognized in an
13 ongoing report in U.S. News and Report that Benning Terrace,
14 although the formal name was called "Simple City" it was a
15 war zone in Southeast DC.

16 You had people suffering from drug addiction, if
17 you weren't drug addicted you were selling drugs, there was a
18 gang war between the Avenue and the Circle I believe it is
19 called, Mr. Curvey grew up in that war zone and it really
20 was.

21 When we think of childhood and how people develop
22 we think of idyllic pastures where the parents are there
23 teaching them and guiding them, Mr. Curvey didn't have that
24 and while his record is extensive a lot of that resulted from
25 his own angst, from childhood and adolescent anxiety,

1 rebellion, anger and ultimately survival in this war zone.

2 That does not excuse his behavior at all and
3 Mr. Curvey does not look at it as an excuse, but it is
4 actually the context in which he grew up and he continued in
5 that survival mentality much through his adulthood.

6 The pride and joy of his life, and he will say this
7 himself, have been his daughters and he has three daughters
8 and he wants to be there for them, he understands that his
9 terrible decision making is going to take him away from those
10 girls for an extended amount of time.

11 We ask for a sentence of 24 months on Count 2 and
12 the mandatory 10 years on Count 3 for a total of 144 months
13 as being sufficient but not greater than necessary to fulfill
14 all the purpose of sentencing and it will be a deterrent for
15 Mr. Curvey.

16 He has never spent more than six years in prison
17 and now we are asking for a sentence that doubles that
18 amount. While he is BOP he will be able to take advantage of
19 vocational training, any educational attainment. He will be
20 able to undergo mental health counseling that he needs.

21 He will be able to participate in a drug program
22 while he won't benefit from a reduced sentence because of it
23 he will be able to participate in that program in order to
24 receive cognitive therapy as well as just assistance with
25 dealing with his triggers and issues that have led to the

1 drug abuse.

2 I think it is also important to know that
3 Mr. Curvey does have the capacity and the where with all to
4 do well when on release. For a period of eight years, while
5 although not perfect, he worked, he supported his family, he
6 took care of his daughters, he taught them things, he taught
7 them how to tie their shoes, he taught them to have good
8 manners, he taught them how to behave.

9 He was there for his daughters, he worked, he has a
10 series of jobs that are noted in the PSR and he is able to
11 get those jobs on his own, go seek it out and do well at
12 those positions and he often left to get better employment to
13 earn more money.

14 Not only that, he did enroll in Westwood College to
15 continue his education. Ultimately he needs to go and
16 complete his GED and then re-enroll but he wanted to do
17 better, he wanted to do more, he wanted to provide for his
18 family and he made great efforts at doing that.

19 In the letters that are offered in support by Faith
20 Crenshaw* as well as Rufus, Terrell his brother as well as
21 his father all indicate that he was on the right path, that
22 he wanted to do the right things but again he had obstacles
23 and setbacks.

24 At times he found himself homeless. At times he
25 found himself unemployed and when you don't have the proper

1 protective factors to help you deal with those challenges,
2 when you don't have the proper mental health counseling and
3 drug addiction, counseling that you need to help you overcome
4 triggers and obstacles there are going to be setbacks.

5 Unfortunately, in September 2010 Mr. Curvey made
6 terrible decisions and he accepts that. We cannot go back to
7 September 2010 and undo that or change anything that happened
8 but what we can do is make sure that he has an opportunity to
9 have a life and do well once he is released.

10 Twelve years is a significant amount of time, it is
11 a significant amount of time and will deter any future
12 criminal behavior. Mr. Curvey will leave prison as an almost
13 50 year old man and we all know that as offenders or
14 Defendants age that there is a lesser likelihood of
15 recidivism and I believe that would be the case for
16 Mr. Curvey. He has had a whole year, over a year to reflect
17 on his actions.

18 He has been talking to his daughters endlessly,
19 unfortunately he is in Charles County so they cannot have
20 contact visits and see them, he does talk to them. He is
21 proud that his daughter published a book of poetry. He is
22 proud that his two year old is walking and talking and doing
23 well and flourishing, he is proud of his daughters and he has
24 had this opportunity to reflect.

25 So we ask that the Court accept our recommendation

1 of 24 months on Count 2 followed by the 10 years of
2 imprisonment on Count 3 and all the factors that were
3 mentioned starting with in utero drug use, his mother's own
4 mental health issues, her incapability of providing for him
5 and abusing him as well as the area that he grew up in which
6 has been officially termed an urban war zone through a series
7 of documentaries that were published by the U.S. News and
8 World Report.

9 That he started life at a deficit and while he did
10 start in that place he does have the potential to grow and do
11 better and yes he is 35, he is not at the end of his life.

12 He has many, many more years ahead of him and we
13 ask that he is given the opportunity to use those years to
14 recapture some of those years that he squandered and be a
15 productive citizen in society and we do believe that he is
16 capable and able to do that as he has demonstrated in the
17 past.

18 Your Honor just in closing, while we have asked for
19 12 years here I think it is also important for the Court to
20 know that this is not the end of the road for Mr. Curvey.

21 He has exposure on State violation of probation
22 where Mr. Lenzner pointed out that he received a 20 year
23 suspended sentence, he is going to be violated because of
24 this and he also stemming from the same conduct, the pending
25 assault matter in DC that he is also going to have to answer

1 to.

2 So while the Government may think this is a lenient
3 sentence that he somehow is not being punished enough, this
4 is just a part of the greater picture and Mr. Curvey is going
5 to have to answer other Courts as well.

6 So we believe that 144 months is sufficient but not
7 greater than necessary given his background, given his
8 personal history, given the document a personal history of
9 not his mother's drug use, her mental health issues, his own
10 mental health and behavioral issues starting in early
11 childhood going through his teen years, Your Honor.

12 Thank you and we believe that this sentence is
13 sufficient and not greater than necessary. If the Court has
14 not questions?

15 THE COURT: You say he is still on probation for
16 the robbery with a deadly weapon? That is not reflected in
17 the pre-sentence report.

18 MS. FELDER: May I have a moment to get the updated
19 version?

20 THE COURT: Yes.

21 (Pause.)

22 MS. FELDER: Your Honor, my understanding is that
23 he is, he was released on July 1st, 2002.

24 MS. BLANCHE: He was never placed on probation in
25 that case, it was just a straight time sentence.

1 MS. FELDER: Your Honor, I am just reiterating my
2 understanding in having gone through this record and my
3 understanding is that he is exposed to time on a sentence
4 where he is going to have to do backup time.

5 So I apologize if that is incorrect but my
6 understanding is that he is subject to a violation of
7 probation as well as a pending matter in DC.

8 THE COURT: The pending matter in DC for the
9 assault is reflected in the pre-sentence report as a pending
10 charge. The sentence for the Montgomery County robbery shows
11 that on reconsideration of sentencing in August of 1998 he
12 was sentenced to 20 years, suspend all but eight, credit for
13 the 458 days that he had served but that there was no
14 probation to follow.

15 MS. FELDER: I stand corrected if that is
16 incorrect, Your Honor, I apologize.

17 THE COURT: I don't know if he was released in July
18 of 2002 this event happened more than eight years later in
19 any event.

20 The probation he was on at the time this happened
21 was the marijuana charge and he was revoked and given 30 days
22 already and that has been resolved, that is Paragraph 52 I
23 believe.

24 MS. FELDER: That is correct, Your Honor, I see
25 that in Paragraph 52 and he also successfully completed other

1 probationary terms.

2 THE COURT: Right, I see that. So I do not believe
3 there is an unresolved probation violation at the moment.
4 There is the assault on a police officer in the Superior
5 Court that is pending.

6 MS. FELDER: Any further questions? Thank you,
7 Your Honor.

8 THE COURT: Thank you.

9 (Pause.)

10 THE COURT: Mr. Curvey, you now have an opportunity
11 yourself to tell me anything that you want me to know.

12 THE DEFENDANT: How are you doing this evening,
13 Your Honor?

14 THE COURT: I am doing fine, thank you.

15 THE DEFENDANT: First I would like to apologize to
16 the victims of the situation and to my family of course for
17 dragging them through this situation.

18 I knew that I have been wrong, I should ---
19 responsibility for my actions. I have a lot I want to say
20 but I don't want to say too much.

21 THE COURT: Take your time and tell me whatever it
22 is you want me to know.

23 THE DEFENDANT: First off, I know that I have like
24 I said committed that offense and made me look bad but Your
25 Honor actually I am not a bad person. I am probably one of

1 the most respectful people that you meet and probably get to
2 know.

3 Throughout my years of being home, the eight years
4 I have been home from my incarceration I had a lot of changes
5 in my life. Like you say, my daughters are my biggest factor
6 in my life and me not being there for them and with them is
7 kind of crushing me right now, the accomplishments my 15 year
8 old daughter made writing a book and me not being there
9 watching my two year old daughter grow and I have an 18 year
10 old daughter who is kind of messing up in school right now, I
11 would like to get ---.

12 But as far as myself, I have had a lot of changes
13 also from the 21 months I have been incarcerated. I am
14 thinking I have to give up my family, myself even the
15 situation that I am in. As far as Mr. --- situation I wish
16 he was here so I could apologize to him also for dragging him
17 through this situation.

18 And my dad, you know he is not here right now I
19 wish he was here so I can apologize to him also and have been
20 very supportive of me. A lot of things that were mentioned
21 in letters by, I can't remember your name, what is your name
22 again, Mr. Lenzner.

23 Your Honor, throughout my life my dad has been very
24 supportive, my stepfather but that is my dad Mr. Hayes, yes
25 and he has been there, I am talking about from the beginning

1 to the end even now we still, I wish he was here so I could
2 thank him also.

3 My family who is back there also, it saddens me to
4 see them back there crying and stuff but I have to deal with
5 the situation. But Nikki, I call my sister she is my cousin,
6 she has been there for me also coming up, she has halfway
7 raised me.

8 She had her hard times also, she has pulled through
9 and she is kind of my role model believe it or not watching
10 her come up and go through her situations that she just did a
11 360.

12 I look at that and that is what me came home after
13 the six and a half years of being incarcerated. Her mother
14 passing away and not being able to be there for her, you know
15 coming home and Nikki taking me in knowing that --- fiancé
16 also has put a toll in my life also, she has been there for
17 me for the seven to eight years I have been home also. She
18 has given me a child, a daughter, that I very much miss as
19 well as her.

20 Me and my other children go through our situations
21 and so forth but I still have love for them, my daughter is
22 sitting back there and my grandmother back there too I am
23 sorry. She actually helped me and my grandfather to get
24 through my Westfield College days, got me a road to show for.

25 I didn't have my GED so I wasn't able to complete

1 it but this go around I think I am going to try to complete
2 it so I can continue to take care of my family and the things
3 I was doing before the situation occurred.

4 I just ask the Court to show mercy on me and give
5 me the chance to do things right and prove to you all that I
6 can do the right thing and make the right decisions on my
7 own. Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Pause.)

10 THE COURT: Mr. Curvey is before the Court for
11 sentencing on Count 2, carjacking and Count 3, use of a
12 firearm in the commission of a crime of violence.

13 These charges arose out of a very dangerous series
14 of events back in September of 2010. As Mr. Lenzner has
15 recounted and as is stated in the agreed statement of facts,
16 Mr. Curvey and another person were in a car that had been
17 stolen the week before at a gas station in Prince George's
18 County at very early hours of morning when the Defendant
19 brandished a firearm and approached two men who were in
20 another car and took that other car from them threatening to
21 shoot them.

22 He drove away, eventually that car was parked and
23 the Defendant reentered the other vehicle, a stolen one. By
24 then of course the police had been notified and the police
25 began trying to apprehend the car the Defendant was in.

1 A dangerous high rate chase occurred and the chase
2 ended when the stolen vehicle, the first stolen vehicle, went
3 out of control and crashed. The Defendant got out and
4 attempted to flee on foot and in the process of doing that he
5 pointed a firearm in the direction of the Prince George's
6 County Police Officers and fired it. The police returned
7 fire.

8 Eventually, the Defendant was apprehended by the
9 Metropolitan Police Department and he was identified.
10 Finally as pointed out, after his transportation to the
11 police station some property was found in the car that had
12 belonged to people who were earlier robbed at gunpoint the
13 day before.

14 Fortunately, there were no physical injuries to the
15 Defendant or the others from the discharge of the firearms or
16 the high speed chase. That does not detract, however, from
17 the extremely dangerous conduct. Mr. Lenzner reports no
18 evidence from the law enforcement end of the Defendant having
19 been high on either alcohol or PCP.

20 Frankly, if he had been that is even more dangerous
21 because whatever faculties one has in reticence to hurt
22 people disappear when one is high. So I do not know that it
23 cuts in the Defendant's favor if in fact he was out there
24 with a loaded firearm and was high. Instead it simply
25 indicates to me that it was even more just a stroke of luck

1 that no one including himself was physically injured during
2 this spree.

3 This conduct is not the first time the Defendant
4 has been involved in this kind of behavior. Though there had
5 been somewhat of a gap since the last robbery there had been
6 some intervening threats to do bodily harm but misdemeanors
7 and I don't have the details so I really cannot assess how
8 significant except that they received only minor sentences.

9 But it does indicate that the Defendant was not
10 totally in control of his temper. He has experienced
11 significant periods of incarceration before and yet was not
12 deterred from being involved in this armed carjacking and use
13 of a firearm.

14 So on that side of the ledger we have extremely
15 serious misconduct by someone who has experienced significant
16 punishments in the past, has a criminal history category that
17 is not at all enviable, puts him in a criminal history
18 category 5 which is the second to the highest category one
19 can achieve.

20 Some of his earlier convictions do not score
21 because they were when he was much younger and the time for
22 counting them has expired.

23 On the other side, we have someone who obviously
24 has developed good stable ties with family members. Seeing
25 from people who are here and who have written to me and

1 indeed what the Government acknowledges they are aware of
2 through conversations that they monitor in the jail. That is
3 a positive for a lot of reasons.

4 It shows me that he cares about people who are
5 close to him and is sincere in expressing his sorrow for
6 having put them through this yet again. I read the records
7 that were sent late last week and the description of the
8 Defendant's early life and no one here would want to think to
9 comment that that was not tragic and very sad for a young
10 person to begin life in that fashion.

11 Others however who experienced that kind of
12 beginning do not make the same changes that Mr. Curvey made.
13 Others still remain law abiding and do the right thing in
14 society. I too am sorry Mr. Hayes is not here so that he
15 could hear what you had to say about him.

16 It sounds to me like he tried very hard to be the
17 kind of good role model and caring parent that everyone hopes
18 to have. For whatever reason you were unable to see that as
19 you were younger and instead chose a different path.

20 So it was not that there were no people in your
21 early upbringing who were in the right place, in the right
22 frame of mind and yet you did not follow their lead. There
23 was also attempts to intervene through the criminal justice
24 system obviously not very successfully from the first time
25 you became involved in some criminal conduct.

1 I also understand that drug addiction is a very
2 difficult thing to overcome. It takes a great deal of
3 strength but first it takes a great deal of resolve to try to
4 do that. If the 21 months since your arrest in this case
5 have helped you to make that decision then incarceration has
6 had one of the beneficial results that we often hope for and
7 that is that people have the time and the space to make
8 decisions about their own lives that are positive.

9 I have to put this all together, I have to decide
10 what sentence and it will be a sentence of incarceration
11 obviously is sufficient but not greater than necessary, to
12 promote respect for law, to protect the public from you, to
13 try to send a signal to others that they ought not be
14 involved in this kind of behavior to begin with. Those are
15 all some of the goals of imposing sentence.

16 The combination of guns and use of drugs by someone
17 who appears willing to try to take things from other people
18 that do not belong to him, a very, very dangerous conduct.

19 The other occasions I see you were involved with
20 other people as well, these are not things you do on your own
21 indicating to me that you have chosen to associate with
22 others who similarly have little respect for the safety of
23 other people or for their personal property.

24 A dangerous situation, people who get together with
25 others, we call that a conspiracy, it is much more dangerous

1 than individual activity because it is more likely to succeed
2 and people are reluctant to back out when they get involved
3 with others even if you think it is a bad idea you want to
4 save face and you are afraid to back out. You need not only
5 to take care of your drug and alcohol problem but as well
6 your choice of associates.

7 The guidelines are a helpful part of a sentencing
8 determination. They try to help a Judge assess the conduct
9 done by someone with the same criminal history category.
10 They obviously do not take into account some of the
11 individual characteristics that we learn about a Defendant.
12 So they are a help but they are not the be all and the end
13 all of sentencing in the Federal system.

14 Mr. Curvey, I am going to sentence you to 48 months
15 on Count 2 and a consecutive 120 months on Count 3. If you
16 abide by the conditions of the institution you are in you
17 will earn good time credit and ultimately you will spend less
18 than 12 years in a Federal facility.

19 The sentence however is 14 and three quarters years
20 but as I said there is good time credit available should you
21 abide by the rules and regulations of the institution.

22 I simply cannot agree that the background of your
23 early life overcomes the seriousness of this behavior to the
24 extent requested by the defense. We are going to follow the
25 incarceration with supervised release and that will be three

1 years on Count 2 and five years on Count 3.

2 This will be on all the normal and ordinary
3 conditions of supervision and in addition I will direct that
4 you participate in a program of substance and/or alcohol
5 abuse as directed as well as a program for mental health
6 treatment as directed. I think both of those issues are life
7 long and that you will benefit from some formal programs in
8 that area.

9 You are going to make effort to obtain your -- okay
10 the supervised release is concurrent, I thank you Ms.
11 Darrow*. To get your GED if you have not already done that
12 while you are in the Bureau of Prisons you will do that while
13 you are on supervised release and in addition you will
14 participate in a vocational or educational program as
15 directed.

16 Both of those are very important toward obtaining
17 the skills necessary in order to be employed. Although you
18 have had some employment I think it can be better if you have
19 some additional training. I am not going to impose any fine
20 but I do impose the special assessment of \$100.00 per count
21 for a total of \$200.00.

22 In addition, we have the agreed upon forfeiture of
23 the firearm and I will make that part of the judgment as
24 well. I will prepare and enter this judgment in writing and
25 copies will be sent out to everyone. Are there any requests

1 for recommendations?

2 MS. FELDER: Yes, Your Honor, we ask for a
3 recommendation that Mr. Curvey has a --- to Petersburg,
4 Virginia.

5 THE COURT: Is that for the particular program, the
6 location?

7 MS. FELDER: Yes, Your Honor, location and
8 programming. In addition, we ask the Court if the Court is
9 inclined to recommend that Mr. Curvey receives credit from
10 September 24th, 2010 under 18 USC 3585.

11 THE COURT: The pre-sentence report reflects that
12 he has been in someone's custody since September 24th, 2010
13 as long as he does not receive credit against that pre-trial
14 time on some other sentence then he will be credited with
15 that.

16 It is up to the Bureau of Prisons to make that
17 calculation but the report that they will get is the one that
18 we have here showing that timing.

19 Mr. Curvey, you gave up some of your rights to
20 appeal as part of your plea agreement with the U.S.
21 Attorney's Office, let me advise you that if you want to
22 appeal it must be noted in writing within two weeks of today.

23 So talk that over promptly with Ms. Felder because
24 she would help you by filing the notice of appeal if that is
25 what you decide to do. I believe there is Count 1?

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1 MR. LENZNER: Yes, Your Honor, we are willing to
2 dismiss Count 1.

3 THE COURT: I believe that completes this
4 proceeding. Is there anything further?

5 MR. LENZNER: Not from the Government.

6 MS. FELDER: Nothing from the defense, thank you
7 Your Honor.

8 MR. LENZNER: Thank you.

9 THE CLERK: All rise. This Honorable Court stands
10 adjourned.

11 (Whereupon, the hearing was concluded.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the duplicated electronic sound recording of the proceedings in the above-entitled matter.

/s/ Michelle L. Smioldo05-31-12

Michelle L. Smioldo

Date

Certified Transcriber

Certificate No.: CET**D-579